Filed 10/27/15 In re I.S. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re I.S., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. M.S. et al., Defendants and Appellants.	E063179 (Super.Ct.No. RIJ1400020) OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson, Judge. Reversed and remanded with directions.

Christine E. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant M.S.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant J.R.

Gregory P. Priamos, County Counsel, Julie Koons Jarvi, Deputy County Counsel for Plaintiff and Respondent.

J.R. (mother) and M.S. (father; collectively, "parents") are the biological parents of J.D., L.R., and I.S. Mother and father appeal from the juvenile court's order terminating their parental rights under Welfare and Institutions Code section 366.26. Mother also appeals from the court's order denying her petition under Welfare and Institutions Code section 388.[1] This appeal pertains solely to I.S.

FACTUAL AND PROCEDURAL HISTORY

On December 19, 2013, San Bernardino County Children and Family Services (CFS) filed a Welfare and Institutions Code section 300[2] petition on behalf of J.D.[3] The petition alleged that J.D. (then 21 months old) came within section 300, subdivisions (b), (f), and (j). CFS alleged that (1) parents failed to supervise and protect the children resulting in the accidental death of J.D.'s sibling, 10-month-old L.R. CFS alleged that parents had a substance abuse problem that compromised their ability to properly care for and parent their child; (2) parents failed to supervise and protect the children from the

---

[1] On June 14, 2015, mother filed a petition for writ of habeas corpus alleging ineffective assistance of counsel (case No. E063961). In an order dated July 24, 2015, this court indicated that mother's writ petition would be considered with this appeal for the sole purpose of determining whether an order to show cause should issue. We resolve that petition by separate order.

[2] All statutory references are to the Welfare and Institutions Code unless otherwise specified.

[3] I.S. was born in August 2014, eight months after the section 300 petition was filed on behalf of J.D.

behavior of the custodian with whom the children were left, and parents knew or reasonably should have known the dangers facing the children under the custodian's care; (3) the father caused the death of another child, a half-sibling to J.D., and that father's maltreatment of the half-sibling was ruled as the cause of death; and (4) while in the care of parents, J.D.'s sister drowned due to the severe neglect of parents, hence, placing J.D. at risk of similar severe neglect, harm, or injury.

According to the Indian Child Inquiry Attachment to the petition, father alleged that he may be a member of the "Cherokee" tribe. Mother denied any Indian heritage. On the father's Parental Notification of Indian Status, he reported that he was or may be a member of or eligible for membership in an Indian tribe; he may have Indian ancestry in the "Cherokee" and "Shawnee" tribes; the child and a relative are or may be members of, or eligible for membership in the "Cherokee" or "Shawnee" tribes.

On December 14, 2013, a social worker was called to a hospital where a police officer was standing-by with parents; J.D., the surviving child, was 21 months old. J.D.'s sibling, L.R., who was 10 months old, had drowned in the family bathtub. The social worker observed parents pleading with the doctors to save their child's life. The doctors explained that everything was done and L.R. passed away. Parents "absolutely fell apart." The hospital chaplain was at their side.

When describing the events that led up to the drowning, mother reported to police that she fed the children, drew them a bath, and placed both L.R. and J.D. in the bath. Mother stated that she turned from the children for a matter of minutes while she looked for a towel for the children. When she was looking in the linen closet and cupboard, she

heard J.D. cry. She thought the children were splashing and told him to stop crying; he complied. When she turned to the bathtub, she saw L.R. floating face up in the bathtub. Mother screamed, grabbed the child from the bathtub, and directed father to call 911. Mother took the child outside the apartment and screamed for help. Mother returned to the inside of the apartment. Parents began CPR on L.R. San Bernardino Fire Department arrived and started life-saving measures; L.R. was transported to the hospital.

Accompanied by a police officer, the social worker went to the family home. The home was not clean and "only marginal for the care of children." The bathtub still had the water from the drowning. On the toilet next to the bathtub there was a drug pipe used for smoking marijuana. The linen closet and cupboard with other linens were both within clear view and vision of the bathtub. There was a folded towel on the back of the bathroom door.

The social worker researched the family in conjunction with Detective Mary Yanez of the San Bernardino Police Crimes Against Children Unit (CACU). The social worker discovered that father had a lengthy criminal history, including domestic violence, murder charges and child endangerment. Father had physically abused a child from a previous relationship; that child died as a result of father's abuse. The family also had one prior CFS referral involving J.D. in 2012 for severe neglect and physical abuse. The referral was determined to be unfounded. Mother had a history with CFS as a victim of abuse and neglect as a minor.

Detective Yanez concluded that the children were left in the bathtub unattended and severely neglected for some time, as the linen closet where the towels were kept was "very near" the bathroom and in sight of the bathtub. The linen closet was not in a location that required time away from the bathroom or out of sight of the bathtub. Additionally, it appeared that someone in the home was smoking marijuana at the time of the drowning. Parents' story of events and family movements just prior to the drowning were not consistent with L.R.'s drowning.

On December 20, 2013, the juvenile court detained J.D. and placed him in a foster home in San Bernardino.

On December 24, 2013, the matter was transferred to Riverside County because a relative seeking placement of J.D. was an employee of CFS. Riverside County accepted the transfer.

On January 22, 2014, father filed a second Parental Notification of Indian Status. Father claimed that he was or may be a member of, or eligible for membership in the Cherokee Tribe. He also reported that the child was or may be a member of, or eligible for membership in the same tribe. Father did not allege that any of his ancestors were members of a tribe. Mother also filed an updated Parental Notification of Indian Status on January 22, 2014. She continued to report that she had no Indian ancestry.

When the Riverside County Department of Public Social Services (DPSS) social worker inquired about father's Indian ancestry, he informed the social worker that he thought he had Shawnee and Cherokee ancestry on his maternal side. The social worker called and spoke with the paternal grandmother (PGM); she provided the social worker

with the Indian Child Welfare Act (ICWA) identification number for the family's Indian ancestry. She stated that father's great-grandmother had Cherokee ancestry; the paternal great-grandmother was deceased.

On February 18, 2014, ICWA notice was filed with the juvenile court. Around February 4, 2014, ICWA notices had been mailed to the Bureau of Indian Affairs (BIA), and to approximately 10 different Indian tribes.

In the jurisdiction/disposition report filed February 19, 2014, the social worker noted that a section 300 petition was previously filed in 2004 as to father's older child, Me.S. The petition had allegations of "physical abuse, general neglect, and death of a child, cruelty, and sibling at risk." The court sustained the petition, and father was offered reunification services. Me.S.'s sister, Q.S., age three months, died as a result of injuries sustained by ongoing physical abuse by father. She suffered from multiple skull fractures, bleeding to the brain, five old fractures to her ribs, and a possible fracture to the right arm. Father left Q.S. placed on the bed so that when her mother arrived home from work, she would think that Q.S. was asleep. When Q.S.'s mother realized that Q.S. was dead, father was more concerned about having an outstanding warrant than the child having died. Father admitted to shaking Q.S.; father was arrested and charged with murder. Father was convicted for child cruelty: possible injury/death. Father was sentenced to four years of probation, 60 days in jail, a fine, and restitution. Father's parental rights were eventually terminated as to Me.S.

In this case, mother was interviewed by the social worker on January 24, 2014. During the interview, mother did not appear to be forthcoming and was very protective of father. Mother did not appear to be very emotional or grieving during the interview. Mother told the social worker that she never used drugs in her life and did not know how she provided a positive drug test. Mother stated that her children were not at risk in father's care, even after she read the police report about Q.S.'s death.

Father was interviewed on the same day. He was calm and cooperative. At times during the interview, father appeared to be crying but the social worker did not observe any tears. Father was protective of himself, but quick to put the blame on mother. Father admitted that the marijuana pipe found in the bathroom was his. He smoke marijuana the night before the incident and forgot that he left the pipe there. He smoked marijuana every day; he began smoking marijuana in middle school. Father did not believe he had a substance abuse problem because he stopped using it "cold turkey."

On December 17, 2013, parents agreed to be interviewed by detectives of the CACU. According to Detective Yanez, parents were evasive during the interview. While mother was being questioned about her daughter, mother suddenly reported that she was going to have a seizure and wanted to faint. Mother refused medical treatment and left the interview. Parents refused a polygraph test. Later, when it was discussed with mother on the telephone that father had previously been convicted of causing the death of a child, mother said she would call Detective Yanez back and hung up the phone. She never called back.

The social worker interviewed the maternal grandfather (MGF). He stated that father did not really help mother around the house or with the children. Also, father did not appear to be bonding with the children. The MGF went back to the home with parents on the day of the incident and ne noticed that the apartment was dirty. The MGF believed that there was more to the story of L.R.'s death than parents were providing. He suspected foul play and that parents were covering for each other. The MGF had not seen parents much after L.R.'s death because he believed that they were hiding something, and it was something mother could not discuss with him.

Father had six children, two of whom were deceased. Father's oldest living child lived in Las Vegas with his mother; another lived in Mississippi with her mother; another lived in Sacramento—adopted by the PGM; and the last living child was J.D.

Mother and MGF wanted J.D. placed with the MGF. DPSS, however, was concerned about the MGF's history when mother was a minor. It was subsequently decided that J.D. would be placed in MGF's care.

The coroner deemed the child's death a drowning but was unable to determine whether it was an intentional drowning based on the age of the child. Law enforcement was concerned that the drowning was not accidental because of father's history. The social worker descried the facts of this case as "disturbing."

DPSS was concerned about mother's mental health. At the end of December 2013, mother and father engaged in an argument resulting in law enforcement being

called to the home. Mother allegedly attempted to stab father with a knife. Mother was "5150'd" and placed in "Ward B in San Bernardino."[4]

Mother attended therapy approximately once every two weeks. When the social worker asked why the sessions were not held on a weekly basis, the therapist stated that mother missed appointments due to a variety of reasons. Mother was making slow progress in therapy. The therapist reported that mother's mood fluctuated and the therapist observed the mother exhibited symptoms related to major depression. By May 2014, mother reported that she attended therapy on a weekly basis and that she completed a parenting class. Mother submitted to random drug tests, and tested negative on March 11, March 21, April 8, April 14, and May 8, 2014.

Mother was referred to Alternatives to Domestic Violence, but mother claimed she did not need the referral because there was no domestic violence in the relationship. Mother and father, however, disclosed domestic violence in their relationship to their individual therapists. Mother later recanted her statements and father denied that there was any current domestic violence.

On March 11, 2014, a first amended petition was filed as to J.D. On June 10, 2014, the juvenile court found true the b-1, b-2 as amended, b-4 as amended, b-8, f-1, f-2, and j-1 allegations. The court also found that the f-3 and b-3 allegations were not true.

---

[4] Section 5150 states, in pertinent part: "When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, . . . may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours . . . for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services."

The court struck allegations b-5 and b-6. The court continued the matter for a dispositional hearing.

On July 17, 2014, the social worker spoke with mother's therapist. The therapist stated that mother was unsuccessful in therapy was and no longer participating in it. Mother often failed to attend sessions or arrived late. It was the therapist's professional opinion that mother suffered from "cognitive issues and avoidant behavior." Mother had a "big detachment from reality." The therapist did not believe mother was ready to have a child back in her care. The therapist provided a diagnosis of "personality disorder" and stated that mother needed more treatment and a psychological evaluation.

Although parents visited with J.D., they claimed that the MGF should ensure that J.D. had enough snacks at the visits since he was receiving money for J.D.

I.S. was born in August 2014. On August 13, 2014, a section 300 petition was filed as to I.S. A first amended petition was filed on August 15, 2014. DPSS alleged that I.S. came within the jurisdiction of the juvenile court under section 300, subdivisions (b) and (j).

On August 13, 2014, the social worker arrived at parents' home. After 45 minutes, parents arrived without I.S. Parents invited the social worker into their home. Parents reported that they took I.S. to Sacramento to live with the PGM. Parents showed the social worker a letter that they drafted indicating they gave the PGM and another relative legal rights to I.S. They did not have the PGM's address. The social worker attempted to call the PGM but there was no answer. The social worker left a message requesting a return telephone call.

On August 18, 2014, the juvenile court found a prima facie showing was made that I.S. came within section 300, subdivisions (b) and (j). I.S. was detained. A jurisdictional hearing was set. I.S. was located and placed in a foster home.

On August 18, 2014, for the first time, mother claimed that she had Indian ancestry. She claimed that the maternal great-grandmother was a member of a federally recognized tribe. She identified the tribe as Cherokee and her great-grandmother's name as "Irene Streting."

Mother reported that she was no longer with father. She was living with friends. The social worker explained to mother that DPSS had concerns about mother's truthfulness because mother had previously stated that she had separated from father, but had not. During I.S.'s detention hearing, mother told the social worker that she was living with her aunt. The aunt, however, denied this. The aunt claimed that mother was trying to get her to lie to DPSS to support mother's claim that she was not living with father. Both mother and father were in their home together on August 17, 2014, when the police conducted a welfare check on the home. Moreover, parents pretended to act like they left visitation separately, but actually left in the same car. They brought separate cars to visits only after the social worker pointed out that parents were leaving in the same car. The social worker explained to mother that it appeared mother was being deceitful and trying to portray that she had separated from father to have the children returned to her.

On September 15, 2014, ICWA notice for I.S. was filed with the court. This notice was sent to the BIA, the three federally recognized Cherokee tribes, and 11 federally recognized Apache tribes. On September 17, 2014, the court found proper ICWA notice and that ICWA did not apply.

While visiting with I.S., parents would overfeed her despite the child suffering from acid reflux. This would cause I.S. to spit up milk, and then parents would proceed to feed her more formula. Parents would continue to overfeed I.S. despite instructions to the contrary. Mother also had to be redirected on multiple occasions because mother would suction mucus out of I.S.'s nose with mother's mouth.

The PGM was assessed for placement and her home was approved. DPSS, however, chose not to place I.S. with the PGM because concerns arose about her appropriateness and ability to be protective of J.D. Future concern arose when the PGM and relatives assisted parents in trying to hide I.S. from DPSS. On October 27, 2014, the juvenile court determined that placement with the PGM was inappropriate.

On October 22, 2014, the juvenile court found true the j-1 and j-2 allegations in the second amended petition. Allegations b-1 and b-2 were stricken. The court found that I.S. came within section 300, subdivision (j). On October 27, 2014, the court denied services to both parents under section 361.5, subdivision (b)(4), and to the father under section 361.5, subdivision (b)(11). A section 366.26 hearing was set.

J.D. continued to live with the MGF, while I.S. was placed in a foster home. DPSS had some concerns with J.D.'s placement. DPSS was concerned with the MGF's follow up with medical care and the continual change of daycare providers. The MGF

would leave J.D. with various friends and family members. J.D. and the MGF were bonded and the MGF expressed a desire to adopt J.D. I.S.'s foster parents expressed a desire to have J.D. reside with them.

On March 17, 2015, the MGF expressed an interest in having I.S. in his care. The social worker testified in October 2014 that I.S. was not placed with MGF because J.D. was "just enough for him." The social worker testified that placing I.S. with MGF would be too much for MGF.

I.S. resided in her prospective adoptive placement since August 18, 2014. I.S. thrived there. I.S. looked to the prospective adoptive parents for interaction and comfort. The prospective adoptive parents consistently attended to I.S.'s needs, and were committed to caring for I.S. under the permanent plan of adoption.

On March 19, 2015, mother filed a section 388 petition. She requested that the section 366.26 hearing be vacated and that she be allowed the opportunity to reunify with I.S. That same day, the court denied mother's section 388 petition. The court also terminated parental rights as to I.S. Sibling visitation was ordered to continue.

On March 23, 2015, father filed a notice of appeal. Mother filed her notice of appeal on April 13, 2015.

DISCUSSION

A. THE JUVENILE COURT PROPERLY DENIED MOTHER'S SECTION 388 PETITION WITHOUT A HEARING

Mother claims that the juvenile court erred in summarily denying her section 388 petition.

"To prevail on a section 388 petition, the moving party must establish that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child." (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.) "Under section 388, a party 'need only make a prima facie showing to trigger the right to proceed by way of a full hearing.' [Citation.] The prima facie showing is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition. [Citation.] In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case. [Citation.] The petition must be liberally construed in favor of its sufficiency." (*In re J.P.* (2014) 229 Cal.App.4th 108, 127.) "Section 388 thus gives the court two choices: (1) summarily deny the petition or (2) hold a hearing." (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912; contra, *In re G.B.* (2014) 227 Cal.App.4th 1147, 1158, fn. 5 [allowing argument on whether the mother had made a prima facie case in a section 388 petition "benefitted her by giving her the opportunity to establish a record supporting her request for an evidentiary hearing"].)

"[C]onclusory claims are insufficient to require a hearing. Specific descriptions of the evidence constituting changed circumstances is required. 'Successful petitions have included declarations or other attachments which demonstrate the showing the petitioner will make at a hearing of the change in circumstances or new evidence.'" (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.) "If a petitioner could get by with general, conclusory allegations, there would be no need for an initial determination by the juvenile court about whether an evidentiary hearing was warranted. In such circumstances, the

decision to grant a hearing on a section 388 petition would be nothing more than a pointless formality." (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.)

"We review a summary denial of a hearing on a modification petition for abuse of discretion. [Citation.] Under this standard of review, we will not disturb the decision of the trial court unless the trial court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination." (*In re A.S.* (2009) 180 Cal.App.4th 351, 358.) Any error by a juvenile court in denying a hearing on a section 388 petition may be deemed harmless where the petitioner fails to identify any additional evidence the petitioner could have presented at an evidentiary hearing that would have established a right to reunification services. (*In re G.B.*, *supra*, 227 Cal.App.4th at pp. 1161-1165.)

Here, mother filed her section 388 petition as to I.S. on the same day as the section 366.26 hearing. Mother indicated in her section 388 petition that she wanted to change the order denying her services. She requested that the section 366.26 hearing be vacated and that she be allowed the opportunity to reunify with I.S. On March 19, 2015, the court summarily denied the petition because the proposed change in order did not promote the best interests of I.S.

In her petition, as to changed circumstances, mother alleged that she no longer lived with father and was actively participating in her case plan. She also alleged that she attended domestic violence classes, could provide for herself and I.S., had a stable living environment, and visited I.S. at every opportunity provided.

As to the best interest of I.S., mother alleged that she had shown her willingness to change and learn from the issues that brought her before the juvenile court. Mother alleged that she had a strong parent/child bond with J.D., who was in the MGF's care. Mother alleged that if she were provided with services, I.S. would be able "to know her brother, maternal relatives, and be brought up by her biological mother." Mother further alleged that the sibling bond should not be severed because I.S. has a mother "who is wanting to raise her as her own."

In this case, services were denied to mother under section 361.5, subdivision (b)(4).[5] Section 361.5, subdivision (b)(4), states that reunification services need not be provided to a parent when the court finds by clear and convincing evidence that "the parent or guardian of the child has caused the death of another child through abuse or neglect." Moreover, the court "shall not order reunification for a parent or guardian described in paragraph . . . (4) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c).) When denying services, the juvenile court found that section 361.5, subdivision (b)(4) applied, and also found that reunification services were not in the children's best interests.

[5] In her petition, mother incorrectly alleged that services were denied under section 361.5, subdivision (b)(14).

As stated above, in order to have a hearing on a section 388 petition, mother must show that the best interests of the child would be promoted by the proposed change. (*In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 323.) Whether or not the proposed change serves the child's best interests is the "critical question." (*In re Edward H., supra*, 43 Cal.App.4th at p. 594.)

According to the California Supreme Court, the goal of assuring stability and continuity is a "primary consideration" in any custody determination. The court stated:

"After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point, 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

In this case, mother failed to make a prima facie showing that vacating the section 366.26 hearing and ordering her reunification services was in I.S.'s best interests. Mother's allegation that she had shown a willingness to change and learn from the issues that brought her before the court does nothing to promote stability for I.S. Moreover, mother has failed to show how having a strong bond with J.D. promotes stability and permanency for I.S.

On appeal, mother's argument focuses on the prior hearing where the court denied reunification services. She cites to both *In re Ethan N.* (2004) 122 Cal.App.4th 55, and *In re Ethan C.* (2012) 54 Cal.4th 610. The cases, however, are not applicable. *Ethan C.* involved the taking of jurisdiction under section 300, subdivision (f). (*Ethan C.*, at pp. 626-641.) *Ethan N.* involved an appeal by the social services agency from an order granting reunification services. (*Ethan N.*, at pp. 63-69.) Neither case involved a section 388 petition.

Furthermore, mother attempts to reargue the circumstances surrounding the death of the children's sibling, L.R. Mother asserts that the drowning was simply an accident, despite the evidence in the record showing it was caused by severe neglect. Mother cites to various websites on the internet containing information about drowning. This information, however, is not properly before us because mother failed to present this evidence before the juvenile court. (*In re A.S.* (2011) 202 Cal.App.4th 237, 245.) Even if we were to consider the information, mother's argument still fails. Here, the evidence, which was considered by the juvenile court and detailed above, supported a finding of severe neglect.

According to the record in this case, I.S. lived almost her entire life with her prospective adoptive parents. She had been placed with them since August of 2014. She thrived in her placement and she looked to the prospective adoptive parents for interaction and comfort. The prospective adoptive parents were committed to caring for I.S. under the permanent plan of adoption. I.S. had found stability and continuity with the prospective adoptive parents. It was not in I.S.'s best interests to grant mother

reunification services. Therefore, we find that the juvenile court did not abuse its discretion in denying mother's section 388 petition without a hearing.

B. ICWA NOTICES

Mother contends that this case should be reversed because notice given under ICWA was deficient. Specifically, she argues that (1) the three federally recognized Shawnee Tribes were not provided with notice; and (2) the ICWA notices sent to the Cherokee Tribes were deficient because they omitted easily accessible information about ancestors.[6] Moreover, father contends that DPSS failed to provide ICWA notice to the Shawnee Tribes as well. As for the Shawnee Tribe, we agree that a limited remand is required. As for the Cherokee Tribe, any alleged error was harmless.

1. *NOTICE REQUIREMENTS UNDER ICWA*

"In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C.

---

[6] Mother also contends that no new ICWA notice was sent on behalf of J.D. when mother first claimed Indian ancestry after repeatedly denying she had Indian ancestry earlier in the dependency proceedings. She also complains that the ICWA notice for J.D. was not sent to the Shawnee Tribes. However, we filed an order on April 9, 2015, dismissing the appeal as to J.D. because the most recent order regarding J.D. merely continued a hearing and did not injuriously affect any of parents' legally cognizable rights or interests. (See case No. E063279.) On June 12, 2015, a partial remittitur was issued as to J.D. only. (See case No. E063179.) Mother, therefore, is unable to contest the ICWA notice as it pertains to J.D. in this case.

§ 1912(a); see also *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1264-1265.) "One of the primary purposes of giving notice to the tribe is to enable it to determine whether the minor is an Indian child. [Citation.] Notice is meaningless if no information or insufficient information is presented to the tribe. [Citation.] The notice must include . . . information about the Indian child's biological mother, biological father, maternal and paternal grandparents and great-grandparents or Indian custodians, including maiden, married and former names or aliases, birthdates, places of birth and death, current and former addresses, tribal enrollment numbers, and/or other identifying information." (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1115-1116, fn. omitted.)

"Since the failure to give proper notice of a dependency proceeding to a tribe with which the dependent child may be affiliated forecloses participation by the tribe, notice requirements are strictly construed. [Citation.] Notice is 'absolutely critical' under the ICWA. [Citation.] Courts have held that without discharging their duty to provide the notice required under the ICWA, state courts do not have jurisdiction to proceed with the dependency proceedings. [Citations.] Thus the failure to provide proper notice is prejudicial error requiring reversal and remand." (*In re Samuel P., supra*, 99 Cal.App.4th at p. 1267.)

2. *DPSS FAILED TO SEND NOTICE TO THE SHAWNEE TRIBES*

At the outset, we address DPSS's response that notice was not required to be sent to the Shawnee Tribes because of conflicting information about potential Shawnee heritage. However, there is no conflict in the evidence that father indicated he believed he had Shawnee and Cherokee ancestry in his family. The ICWA notice and inquiry

requirements were triggered. (See *In re Nikki R.* (2003) 106 Cal.App.4th 844, 848 ["the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement"].) As a result, DPSS was required to provide the Cherokee and Shawnee Tribes with ICWA notice. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 702 (*Francisco W.*); § 224.2.) DPSS sent ICWA notices to the Cherokee Tribes and the BIA. However, it did not send ICWA notice to the Shawnee Tribe. Therefore, the matter should be remanded for the limited purpose of sending ICWA notice to the Shawnee Tribe.

DPSS argues that any failure to provide notice to the Shawnee Tribe was harmless error, asserting that father's grandmother only indicated Cherokee Indian ancestry, and not Shawnee Indian ancestry. Therefore, parents have not provided any evidence to show that, had notice been provided to the Shawnee Tribe, I.S. would have been found to be an Indian child. This claim lacks merit. "Courts have consistently held failure to provide the required notice requires remand unless the tribe has participated in the proceedings or expressly indicated they have no interest in the proceedings." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1424.) Here, it is undisputed that DPSS did not send notice of the proceedings to the Shawnee Tribe. Thus, the Shawnee Tribe has not had the opportunity to participate in the proceedings or expressly indicate they have no interest in the proceedings. "The juvenile court's failure to secure compliance with the notice provisions of [ICWA] is prejudicial error." (*Ibid.*)

Therefore, we will reverse the order terminating parental rights and will remand the matter for DPSS to send ICWA notice to the Shawnee Tribe. (See *Francisco W., supra*, 139 Cal.App.4th at p. 711.) After the juvenile court finds that there has been substantial compliance with the notice requirements, it is directed to make a finding regarding whether I.S. is an Indian child. If the court finds that I.S. is not an Indian child, it is directed to reinstate the original order terminating parental rights. However, if the court finds that I.S. is an Indian child, the court is directed to set a new section 366.26 hearing and shall conduct all further proceedings in compliance with ICWA and all related federal and state law. (*In re Jonathan S.* (2005) 129 Cal.App.4th 334, 343.)

3. *ICWA NOTICE SENT TO THE CHEROKEE TRIBES*

Mother also contends that the matter should be remanded because the notice sent by DPSS to the Cherokee Tribe was deficient because the notice omitted information about certain relatives such as parents, MGF and aunts, and PGM. DPSSs argues that "[d]espite this missing information, this Court should affirm the Trial Court. This is because the deficiencies in the notices given to the Cherokee [T]ribes and the BIA are harmless." We agree.

"[W]here notice has been received by the tribe, as it undisputedly was in this case, errors or omissions in the notice are reviewed under the harmless error standard." (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576 [Fourth Dist., Div. Two] (*Cheyanne F.*).) "Deficiencies in an ICWA notice are generally prejudicial, but may be deemed harmless under some circumstances." (*Id.* at p. 577.)

In the instant case, although identifying information regarding some relatives were not listed on the ICWA notice, the relatives that mother and father claimed to be connected to the tribe were listed. Mother reported that her great-grandmother, "Irene Streting," was a member of a federally recognized tribe. Mother's great-grandmother's name and tribal affiliation are listed on the notice form. Moreover, according to the PGM, father's great-grandmother, who was deceased, had Cherokee ancestry. In the record, the paternal great-great-great-grandmother, Addie Jones, is listed on the notice.

In *Cheyanne F.*, *supra*, 164 Cal.App.4th 571, the parents submitted their parental notification of Indian status forms. The mother stated that she was not aware of any Indian ancestry. The father claimed that he was a registered member of the Blackfeet Tribe. ICWA notice was sent. The notice, however, only included the father's ancestry, and did not contain information concerning the mother and the names of her relatives. (*Id.* at p. 574.)

The mother appealed from an order terminating her parental rights and contended that the juvenile court's finding that ICWA did not apply was erroneous because the agency omitted required information. (*Cheyanne F.*, *supra*, 164 Cal.App.4th at p. 573.) The mother claimed that the juvenile court's ruling was erroneous because the agency failed to perform its mandatory duty to provide the tribe with her place of birth, and the names of her parents and grandparents. She pointed out that her place of birth and names of her parents were known to the agency. (*Ibid.*)

In *Cheyanne F., supra*, 164 Cal.App.4th 571, we determined that an ICWA notice must "contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership." (*Id.* at p. 576.) We also found that, "in the absence of any indication that information concerning [the mother's] family was relevant to the tribe's inquiry, there is no basis upon which to conclude that the outcome would have been different if DPSS had provided [the mother's] place of birth and the information concerning her parents and grandparents." (*Id.* at p. 577.) We therefore concluded that the mother failed to show that any omission was prejudicial. We affirmed the order terminating parental rights. (*Id.* at pp. 573, 579.)

This case is similar to *Cheyanne F., supra,* 164 Cal.App.4th 571. Here, mother claims that the ICWA notice was deficient because it excluded information about relatives. Mother, however, has filed to provide "any indication that information concerning . . . family," who were not identified as having a connection to a tribe, was relevant to the tribe's inquiry. (*Id.* at p. 577.) The mother has failed to articulate any reason why I.S.'s Indian heritage might have been established if the ICWA notice included information about the non-Indian extended family. (See *In re J.M.* (2012) 206 Cal.App.4th 375, 381-382.) Accordingly, any failure to include information about the non-Indian, extended relatives in the ICWA notice is harmless error. (*Cheyanne F.*, at p. 579.)

C. MOTHER DOES NOT HAVE STANDING TO CHALLEGE MINORS' COUNSEL'S ALLEGED CONFLICT OF INTEREST

Mother contends that the juvenile court committed reversible error when it failed to appoint separate counsel for the children. Mother claims that an actual conflict of interest developed between the children when I.S. was placed in a non-related foster home instead of being placed with a relative. Mother asserts that the conflict was exacerbated when I.S.'s foster parents also wanted placement of J.D., and the MGF sought placement of I.S. Mother argues that the conflict would further be exacerbated when a permanent plan for the children would likely result in a severance of their sibling relationship.

Mother has forfeited this argument because she failed to raise it in the juvenile court. If a parent fails to object or raise an issue in the juvenile court, the parent is prevented from presenting the issue on appeal. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339.) "[A] party is precluded from urging on appeal any point not raised in the trial court." (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.) Because mother failed to raise the issue that separate counsel should have been appointed for the children, she is barred from raising it on appeal.

Moreover, even if mother is not barred from raising this issue on appeal, mother does not have standing. Mother cannot assert an issue on appeal that did not affect her own rights. (*In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1806.) "Generally, parents can appeal judgments or orders in juvenile dependency matters. [Citation.] However, a parent must also establish she is a 'party aggrieved' to obtain a review of a ruling on the

merits. [Citation.] Therefore, a parent cannot raise issues on appeal from a dependency matter that do not affect her own rights. [Citation.] Standing to appeal is jurisdictional." (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703 (*Frank L.*).) "The interest of siblings . . . in their relationship with [each other] is separate from that of the parent." (*In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541; accord, *Frank L.*, at p. 703.) Hence, a parent "does not have standing to raise the issue of whether [a child's] counsel was ineffective as a result of his counsel's representation of him and his siblings." (*Frank L.*, at p. 703.)

In *Frank L.*, the mother argued ineffective assistance of counsel on behalf of one of her children because the same attorney represented all of her children. The mother claimed that she had standing to raise this issue because her parental rights were intact, giving her the right to appeal any decision affecting the child's best interest. She also claimed standing because her interests were intertwined with the other children's interest—all of them did not want one child to move to another state. The court, however, stated that "these factors do not give Mother standing. '[T]he mere fact a parent takes a position on a matter at issue in a juvenile dependency case which affects his or her child does not alone constitute a sufficient reason to establish standing to challenge an adverse ruling on it.' [Citation.] To have standing, Mother must show how the alleged conflict of interest affects her." (*Frank L.*, *supra*, 81 Cal.App.4th at p. 703.) In *Frank L.*, the mother only cited the alleged conflict of interest as having an adverse impact on the children. "Without some showing that her personal rights were affected," the court held that the mother had no standing. (*Ibid*.)

Here, the facts are similar. Mother, like the mother in *Frank L.*, argues that the potential conflict in having one attorney represent both children had an adverse impact on the children: "The conflict first arose when [I.S.] was placed in a non-related foster home, as opposed to a plethora of relatives seeking placement. [Citations.] The conflict became more evident when the foster parents wanted placement of [J.D.] too and [MGF], who had [J.D.], was seeking placement of [I.S.], and when the permanent plan for the children would likely result in severance of their sibling relationship." Essentially, mother's arguments relate to the children and do not affect her personal rights. Mother is unable to show how her interests are interwoven with the children's interests. She is also unable to show that "counsel's alleged conflict of interest actually affected [her] interests." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 811 [Fourth Dist., Div. Two].)

Accordingly, mother is without standing to raise this issue, and we are without jurisdiction to consider it.

Moreover, even assuming a conflict existed, failure to appoint separate counsel for siblings with alleged conflicting interests is subject to harmless error analysis. The test is whether there is a reasonable probability that independent counsel would have made a difference in the outcome. (*In re Daniel H.*, *supra*, 99 Cal.App.4th 804, 813; *In re Candida S.* (1992) 7 Cal.App.4th 1240, 1252-1254.) Here, mother does not suggest what would have been done differently had separate counsel been appointed. There was no indication the prospective adoptive parents would interfere with I.S.'s relationship with her sibling; in fact, the evidence showed the opposite. Both caretakers of I.S. and J.D. thought that maintaining sibling visitation was important. On this record, it is not

reasonably likely the court would have made a different ruling had independent counsel been appointed. Consequently, even if we concluded there was an actual conflict, we would find no basis for reversal.

DISPOSITION

The order terminating parents' parental rights is conditionally reversed, and the matter is remanded. Upon remand, the juvenile court shall direct DPSS to send notice in accordance with ICWA and related California law to the BIA and Shawnee Tribe. If, after receiving proper notice, an Indian tribe intervenes, the juvenile court shall proceed in accordance with ICWA. If no Indian tribes intervene, the order terminating parental rights shall be reinstated. (*Francisco W.*, *supra*, 139 Cal.App.4th at pp. 705, 711.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

RAMIREZ
P. J.

KING
J.